IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 151 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAKUBEN WIFE OF NAGINBHAI GAFURBHAI - Applicant(s)

Versus

PAPPU ALIAS JITUBHAI BHAGWAN- DAS - Opponent(s)

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Appearance :

MR DILIP B RANA for Applicant(s) : 1,
None for Opponent(s) : 1, 1.2.3,1.2.4
RULE SERVED for Opponent(s) : 1.2.1,1.2.2

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CORAM : HONOURABLE MR.JUSTICE RAVI R.TRIPATHI

Date : 15/09/2005

ORAL JUDGMENT

1. The original plaintiff-landlord is before this Court being aggrieved by the judgement and order passed in Regular Civil Appeal No.163 of 2001, dated 13.04.2005

whereby the learned First Appellate Judge was pleased to uphold the judgement and decree passed in Civil Suit No.345 of 1984 dated 18.02.1992.

2. The facts of the case are that the petitioner-landlord, original plaintiff had filed Civil Suit No.345 of 1984 for getting possession of the suit premises on various grounds. The learned Judge of the trial court was pleased to raise as many as nine issues in the matter of which Issue No.6 pertains to reasonable, bona fide requirement of the plaintiff. The Court recorded its finding in negative.

3. Similarly in Issue No.7, the Court considered whether in light of the finding recorded qua Issue No.6 if a decree for possession is passed, it will cause more hardship to the plaintiff or to the defendant. To that, the Court recorded a finding that the defendant will face more hardship than the plaintiff.

4. An appeal being Civil Appeal No.41 of 1992 was filed wherein the learned First Appellate Judge raised two issues, viz.

(i) Whether the learned Trial Judge has not made

comparative study of the evidence led before him for dismissing the suit of the plaintiff?

and

(ii) Whether at this stage, interference by this Court in the judgement and order of the learned Trial Judge is warranted.

The learned First Appellate Judge was pleased to answer Issues No.1 & 2 partly in affirmative. The learned First Appellate Judge in operative part pass the following order.

> “The appeal of the appellant is partly allowed; the judgement and order of the Court below is quashed and set aside and the matter is remanded. After giving proper opportunity to both the parties to lead evidence on the point of hardship and after considering the evidence led before the Court, the issue shall be decided on or before 31.12.1998 and be returned to this Court (the First Appellate Court).”

5. At this juncture, this Court is not able to restrain itself from recording a fact that the counterpart of the learned advocate appearing for the petitioner did not

bother to notice and then to point out the contradictions in the order. The learned First Appellate Judge in the earlier part of his order stated that he is passing the order qua Issue No.6, which pertained to the bona fide requirement of the plaintiff, but then in the operative part the learned First Appellate Judge directed the learned Trial Judge to allow both the parties to lead evidence on the point of hardship and after considering the same, to record his decision on that and remit the matter to the learned First Appellate Judge.

The resultant effect is that the finding on Issue No.6 recorded earlier remained. That being so, neither the learned Trial Judge nor the learned First Appellate Judge has committed any error.

6. On remand, the matter was heard by the learned Judge of the Trial Court who recorded a finding as directed by the First Appellate Judge on the point of hardship. The learned Judge after discussing the evidence in detail recorded a finding that looking to the number of members in the family and looking to the fact that even in winter and monsoon, old mother and father have to sleep outside the rooms on 'Otla'. As against

that number of members in the defendant's family has decreased, hardship is more to the plaintiff than the defendant. Having recorded this finding in para 16 of the judgement the learned Trial Judge has proceeded to consider Issue No.9 and considered whether in light of the findings recorded on the point of hardship whether the plaintiff is entitled to get possession of the suit premises from the defendant.

7. The matter was again brought before the First Appellate Court wherein the learned Judge after appreciating the judgement and order of the learned Trial Judge held that the appeal deserves to be dismissed and the judgement and order of the learned Trial Judge is required to be approved.

8. Mr.Rana, learned advocate appearing for the petitioner focussed the attention on the point of hardship and reasonable requirement, but could not point out the area in possession of the plaintiff or the area of the suit premises leased out to the defendant. He is also not able to point out as to why despite contradictory directions contained in the order dated 18.08.1998 no clarification was sought for from the First

Appellate Court when the matter was remanded to the Trial Court. In the considered opinion of this Court both the learned Judges have rightly held that in view of the existing finding recorded on Issue No.6, i.e. bona fide requirement of the plaintiff, decree for possession cannot be passed. This Court finds no error because when a finding is recorded in Issue No.6 on the point of bona fide requirement of the plaintiff in negation, a decree for eviction cannot be passed.

9. Mr.Rana, learned advocate for the Petitioner relied upon a decision of this Court in the matter of Vithalbhai Biharilal Patel (since decd.) through his heirs & another Vs.heirs of deceased Laxmanbhai Gordhandas, reported in 2003 (2) GCD 1604 (Guj.) to contend that when there is a finding recorded on the point of hardship, in favour of the plaintiff a decree of eviction shall follow. Mr.Rana missed an important aspect of the matter that in that case finding on the point of bona fide requirement was recorded in favour of the plaintiff. Therefore, only question of hardship was required to be considered by the Court, and having found that even hardship will be more for the plaintiff, a decree of eviction was ordered. The case has no application to the facts of the present case.

10. In view of the aforesaid discussion this Revision application fails and the same is dismissed. Rule is discharged.

(RAVI R. TRIPATHI, J.)

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